

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE

Assigned on Briefs November 20, 2008

STATE OF TENNESSEE v. DAVID LEE WAKEFIELD

Appeal from the Circuit Court for Maury County
No. 13794 Robert Holloway, Judge

No. M2007-02813-CCA-R3-CD - Filed January 21, 2009

The Defendant, David Lee Wakefield, was charged with driving under the influence, fifth offense, and violation of the implied consent law. The trial court granted a mistrial during the Defendant's trial, over the objection of the Defendant, and ordered a new trial. At the conclusion of the new trial, the jury found the Defendant guilty as charged. The Defendant appeals as of right, arguing that there did not exist manifest necessity for a mistrial and his retrial violated double jeopardy principles. Following our review, we affirm the judgment of Maury County Circuit Court.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Affirmed

DAVID H. WELLES, J., delivered the opinion of the court, in which JOHN EVERETT WILLIAMS and NORMA MCGEE OGLE, JJ., joined.

Gary Howell, Mt. Pleasant, Tennessee, for the appellant, David Lee Wakefield.

Robert E. Cooper, Jr., Attorney General and Reporter; Elizabeth B. Marney, Senior Counsel; and Mike Bottoms, District Attorney General, for the appellee, State of Tennessee.

OPINION

Factual Background

We begin by noting that the record on appeal is sparse. This case began on April 8, 2003, when a Maury County grand jury indicted the Defendant for driving under the influence ("DUI"), fifth offense, and violation of the implied consent law. The Defendant was first tried on December 29, 2003, and found guilty as charged. The Defendant moved for a judgment of acquittal notwithstanding the jury's verdict, and the trial court granted the motion. This Court, finding sufficient evidence to support the verdict, reversed the ruling of the trial court and remanded the case for a new trial. See State v. David Lee Wakefield, No. M2004-00290-CCA-R3-CD, 2005 WL 1475315, at *6-7 (Tenn. Crim. App., Nashville, June 22, 2005).

The Defendant was tried again on January 23, 2007. The events occurring thereafter are summarized in the order of the trial court as follows:

2. During the course of deliberations, a juror approached the [c]ourt and announced her refusal to deliberate.

3. The [c]ourt attempted to convince the juror to deliberate, but was unsuccessful.

4. The [c]ourt ordered the juror to deliberate, but she refused.

5. The [c]ourt found the juror in contempt. The juror was handcuffed and placed in the custody of the Maury County Sheriff's Department.

6. The [c]ourt later released the juror upon her statement that she would return to deliberations.

7. The juror returned to the jury room.

8. The alternate juror, having overheard discussions between defense counsel and the State concerning the Defendant's criminal record, had been excused prior to this occurrence.

9. The [c]ourt then declared a mistrial over the objection of the Defendant.

10. On April 24, 2007, the Defendant made an oral motion to dismiss based on a Double Jeopardy challenge.

11. The [c]ourt denied the motion and the Defendant was tried and convicted of Driving Under the Influence, Fifth Offense.

12. The [c]ourt believed at the time of the mistrial and at the hearing of the present motion that it was manifestly necessary that a mistrial be declared under the above circumstances to prevent the possibility of any miscarriage of justice.

A transcript of the trial is not included in the record. A full recitation of the facts underlying the Defendant's crimes (from his first trial) can be found in this Court's first opinion. See Wakefield, 2005WL 1475315, at *1-3.

It also appears from the record that the Defendant was convicted of violating the implied consent law. The Defendant received a sentence of two years for his DUI conviction.

On July 9, 2007, the Defendant filed a motion for judgment of acquittal or for arrest of judgment, arguing that his April 24, 2007 retrial was barred by the double jeopardy clauses of the United States and Tennessee Constitutions and, thus, that the judgments of conviction should be set aside and the charges dismissed. The trial court denied the motion by order dated November 15, 2007. It is from this order that the Defendant now appeals.

ANALYSIS

On appeal, the Defendant argues that there was no evidence of “manifest necessity” for the granting of a mistrial and, therefore, his subsequent retrial was prohibited by double jeopardy. Specifically, he contends that “the juror agreed to re-join her fellow jurors and continue deliberations. There was no further questioning of that juror nor any other jurors to determine what effect, if any, the incident might have on their ability to render a verdict.”

The double jeopardy clause of the Fifth Amendment to the United States Constitution provides that no person shall “be subject for the same offense to be twice put in jeopardy of life or limb” Article 1, section 10 of the Tennessee Constitution contains a similar provision. As our supreme court has noted many times, the three fundamental principles underlying double jeopardy provide protections against: (1) a second prosecution after an acquittal; (2) a second prosecution after conviction; and (3) multiple punishments for the same offense. State v. Denton, 938 S.W.2d 373, 378 (Tenn. 1996); see also North Carolina v. Pearce, 395 U.S. 711 (1969), overruled in part by Alabama v. Smith, 490 U.S. 794 (1989).

Where a trial is terminated over the objection of the defendant the test for lifting the double jeopardy bar to a second trial is the “manifest necessity” standard first enunciated by Justice Story’s opinion for the Court in United States v. Perez, 22 U.S. 579 (1824), and adopted in Tennessee in Mahala v. State, 18 Tenn. 532, 536 (1837). Although Perez dealt with the most common form of “manifest necessity,” the declaration of a mistrial following a jury’s inability to reach a verdict, the principle stated therein applies generally.

[T]he law has invested Courts of justice with the authority to discharge a jury from giving any verdict, whenever, in their opinion, taking all the circumstances into consideration, there is a manifest necessity for the act, or the ends of public justice would otherwise be defeated. They are to exercise a sound discretion on the subject; and it is impossible to define all the circumstances, which would render it proper to interfere. To be sure, the power ought to be used with the greater caution, under urgent circumstances, and for very plain and obvious causes; and, in capital cases especially, Courts should be extremely careful how they interfere with any of the chances of life, in favour of the prisoner. But, after all, they have the right to order the discharge; and the security which the public have for the faithful, sound, and conscientious exercise of this discretion, rests, in this, as in other cases, upon the responsibility of the Judges, under their oaths of office.

Perez, 22 U.S. at 580. The doctrine of “manifest necessity” safeguards the accused’s right to have his trial completed by a particular tribunal, while at the same time preserving “the public’s interest in fair trials designed to end in just judgments.” Wade v. Hunter, 336 U.S. 684, 689 (1949); see also Arizona v. Washington, 434 U.S. 497, 505 (1978); Etter v. State, 205 S.W.2d 1, 3 (Tenn. 1947).

The purpose of a mistrial is to correct the damage done to the judicial process when some event has occurred which would preclude an impartial verdict. See Arnold v. State, 563 S.W.2d 792, 794 (Tenn. Crim. App. 1977). The decision whether to grant a mistrial is within the trial court’s discretion and will not be disturbed absent an abuse of that discretion. State v. Millbrooks, 819 S.W.2d 441, 443 (Tenn. Crim. App. 1991). For this reason, an appellate court’s review should provide considerable deference to the trial court’s ruling in determining whether an occurrence or event at trial has so prejudiced the defendant or the State as to preclude a fair and impartial verdict. State v. Williams, 929 S.W.2d 385, 388 (Tenn. Crim. App. 1996). However, as noted, if the trial court does grant a mistrial over the objection of the defendant without a “manifest necessity” for doing so, double jeopardy concerns will prohibit a retrial of the defendant.

In determining whether there is a “manifest necessity” for a mistrial, “no abstract formula should be mechanically applied and all circumstances should be taken into account.” State v. Mounce, 859 S.W.2d 319, 322 (Tenn. 1993) (citation omitted). Only when there is “no feasible alternative to halting the proceedings” can a manifest necessity be shown. State v. Knight, 616 S.W.2d 593, 596 (Tenn. 1981).

In the case herein, the trial court declared a mistrial sua sponte following the juror’s uncooperative and disruptive conduct. We have reviewed the scant record, and our examination convinces us that the trial court exercised sound discretion in concluding that the circumstances of this case constituted manifest necessity to declare a mistrial.

According to the findings of the trial court, the juror refused to deliberate even after attempts to persuade her to do so. Ultimately, she was held in contempt and placed in the custody of the Maury County Sheriff’s Department. The juror then reluctantly agreed to return to deliberations and returned to the jury room. The trial court had previously dismissed the alternate juror due to that juror having overheard discussions between defense counsel and the State about the Defendant’s criminal record.

Evidently, the trial judge came to the conclusion that the unruly juror could not be fair and impartial, thereby precluding an impartial verdict. The trial court’s failure to inquire into the juror’s impartiality does not change our opinion that the trial judge exercised sound discretion in this case given the juror’s prior uncooperative conduct. The Supreme Court long ago held that

[t]here can be no condition of things in which the necessity for the exercise of this (mistrial) power is more manifest, in order to prevent the defeat of the ends of public justice, than when it is made to appear to the court that . . . the jurors, or any of them,

are subject to such bias or prejudice as not to stand impartial between the government and the accused.

See Simmons v. United States, 142 U.S. 148, 154 (1891). The circumstances of this case rendered doubtful the juror's ability to render an impartial verdict. In our view, these unusual circumstances created "manifest necessity" to declare a mistrial.

CONCLUSION

Retrial of the Defendant was not inconsistent with the state and federal constitutional provisions against double jeopardy. The judgment of the Maury County Circuit is affirmed.

DAVID H. WELLES, JUDGE